

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 3:16CR00249-001
)	
Plaintiff,)	JUDGE JEFFREY J. HELMICK
)	
v.)	
)	
CHARLES EDWARD BUTLER, JR.,)	
)	
Defendant.)	

GOVERNMENT'S SENTENCING MEMORANDUM

Now comes the United States of America, by and through its counsel, David A. Sierleja, Acting United States Attorney, Michael J. Freeman, Assistant United States Attorney, Dana A. Mulhauser, Trial Attorney for the Civil Rights Division, and Robert Miller, Special Assistant United States Attorney, and respectfully moves this Court to upward vary from the Sentencing Guidelines and impose the statutory maximum of 120 months of imprisonment.

I. Factual Statement

The factual statement of this case was stated in detail in Government's Response to Defendant's Presentence Investigation Report. (Dkt. No. 28.) For completeness, the factual basis is reiterated in this memorandum with some additional facts pertinent to sentencing.

Defendant has made no objections or corrections to the following facts:

On May 18, 2016, Charles Butler, Jr. and Robert Paschalis willfully caused bodily injury to A.W., who is African-American, because of his actual or perceived race, color, or national origin. (PSR, Dkt. No. 27, ¶ 6-19.) Specifically, on the aforementioned date, A.W., who is African-American, was loading items into the back of his pickup truck in front of his residence at

Lagrange and N. Michigan Streets, in the city of Toledo, Ohio. (*Id.* ¶ 7.) Butler and Paschalis drove past A.W. on the side of the road in a black GMC pickup. (*Id.*) Butler and Paschalis had no prior contact with A.W. (*Id.*)

Within minutes after the initial pass, Butler and Paschalis circled back outside of A.W.'s residence. (*Id.* ¶ 8.) Butler and Paschalis immediately exited their vehicle and Butler called A.W. a "nigger," and Paschalis called him a "faggot." (*Id.*) They both crossed the street and started a physical confrontation with A.W. Butler grabbed a broom from the back of A.W.'s pickup truck and struck A.W. with the broom, knocking A.W. to the ground. (*Id.* ¶ 8, 17.) During the altercation, Paschalis joined Butler and they repeatedly punched and kicked A.W. (*Id.*) The assault lasted for several minutes until two off-duty Ohio Public Safety Officers broke it up. (*Id.* ¶ 8.)

While detained at the scene, Paschalis told law enforcement officers that the fight was because Butler and he were racist and, unlike Butler, he had not "earned" his Swastika tattoo yet. (*Id.* ¶ 9.)

Butler, Paschalis, and A.W. all went to the hospital. (*Id.* ¶ 10.) A medical exam of A.W. found he suffered from "extensive periorbital emphysema" on the right eye and visible injuries to his face. (*Id.* ¶ 22.) A.W. had "severe disruption of the inferior aspect of the lamina papyracea with extrusion of the extraconal fat into the ethmoid air cells with abundant hemorrhage into the ethmoid air cells." (*Id.*) A.W. reported that he still takes pain medication for his recurring headaches from the assault. (PSR, Dkt. No. 27, ¶ 23.)

Butler is a self-identified white supremacist. (PSR, Dkt. No. 25, ¶ 11.) He has numerous tattoos indicative of white supremacy, including the German War Eagle, a portrait of Adolph Hitler, a Swastika, an iron cross, and a Confederate flag. (*Id.*)

Butler and Paschalis were Facebook “friends,” allowing Paschalis access to Butler’s Facebook profile. (*Id.* ¶ 12.) Butler’s Facebook is filled with photographs and posts of Adolph Hitler, burning crosses, Nazi war eagles, Aryan Nationalist Alliance logos, Confederate flags, the Ku Klux Klan, references to President Obama as a monkey, and various white pride symbols. (*Id.* and Ex. 1-3)

Butler made two Facebook posts related to this altercation. (*Id.* ¶ 13-16.) On May 18, 2016, the same day as the assault of A.W., Butler posted a photograph showing his head with bandages on a bloody wound with the caption,

Nigger running his mouth but like a bitch he grab a bat... Im in the E.R. so his the nigger. His got broken ribs. I’m fine....just a lil pissed cuz the cops showed up while me and my brother was kicking his ass.

(*Id.* ¶ 14.)

The next day, Butler posted a photograph showing his head laceration (without bandages) and with the caption,

I just took this pic a sec ago...Hell as u can c I’m fine....More scores to add to my war book of the White Man. MLLH&R¹ 14/88.² I’m a warrior and fight till the death.. DEATH B4 DISHONOR”. All in the name of the White Race. My battle wounds will heal but I’ve lived to fight another day.

(*Id.* ¶ 16.)

On May 27, 2016, the FBI executed a search warrant at the Defendant’s residence at 1035 N. Michigan Street, Toledo, Ohio. Agents found white supremacy materials in a trashcan

¹ This is an acronym for Much Love, Loyalty, Honor & Respect.

² 14/88 is a term recognized by white supremacists. Fourteen represents the 14 words written by David Lane, “We must secure the existence of our people and a future for white children.” Eighty-eight is a reference to the eighth letter in the alphabet, H, to represent HH or “Heil Hitler.”

next to the house including handwritten notes of the structure and symbols for the Aryan Republic Army. (*See* Ex. 4 and 5).

The PSR writer interviewed the Defendant related to the assault. (PSR, Dkt. No. 27, ¶ 27-31). The Defendant admitted that the assault “had everything to do with race” and the victim did nothing to provoke it. (*Id.* ¶ 27.) The Defendant also admitted that he supports white supremacy thoughts and that he had white supremacy literature in prison in 2015. (*Id.* ¶ 28.) Specifically, while serving a state sentence in 2015, prison personnel found Aryan Republic Army literature in his cell. (*Id.* and *See* Ex. 6) The Defendant admitted to prison staff he was a member of that organization since 2009 and that he did not like African-Americans. (*See* Ex. 6.)

As part of this case, the Court ordered a physiological exam. (PSR, Dkt. No. 27, ¶ 104.) Dr. Gregory Forgac conducted the evaluation. (*Id.*). During the evaluation, the Defendant admitted he did not “play well with others.” (*Id.* ¶ 109). Dr. Forgac noted elevations in “Personality Psychopathology 5” scales that are similar to those who show aggressiveness and “may enjoy intimidating others.” (*Id.* ¶ 111.) However, Dr. Forgac stated that these conditions were not because of any severe mental disease or defect. (*Id.* ¶ 107.)

While sitting in the Lucas County Jail on the current charge, the Defendant made a call to his girlfriend that demonstrated his violent racial animus is ongoing. (*See* Ex. 7.) During the call, the Defendant joked about African-Americans being lynched. (*Id.*) Specifically, the Defendant stated, “What’s the difference between an apple and a black person? An apple falls from a tree and a black person don’t” followed by laughter. (*Id.*)

II. Factors Under 18 U.S.C. § 3553(a)

When imposing a criminal sentence, Congress has required courts to consider the factors identified in Title 18, United States Code, Section 3553(a), including: the nature and

circumstances of the offense; the history and characteristics of the defendant; to afford adequate deterrence (both personal and general); to protect the public; and the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and to provide a just punishment.

A. Nature and Circumstances of the Offense

In order to put Defendant's conduct in proper context and prospective, it is important to understand the history and background of the federal statute he violated. Defendant pleaded guilty to violating Title 18, United States Code, Section 249(a). This statute was part of a bill named the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. *See* PL 111-84, October 28, 2009, 123 Stat 2190, Division E.

In 1998, Matthew Shepard was a student at the University of Wyoming. *See* The Anti-Defamation League, *Matthew Shepard Biography* (last visited March 29, 2017) www.adl.org/education-outreach. *Id.* Two perpetrators drove Shepard to a remote area, brutally beat his head and face causing a skull fracture, tied him to a fence, and left him for dead. *Id.* Six days later, Shepard died from those injuries at a hospital. *Id.* The perpetrators targeted Shepard because he was gay. *Id.*

That same year, James Byrd Jr., an African-American, accepted a ride from three acquaintances, who unbeknownst to Byrd were white supremacists. *See* The Anti-Defamation League, *James Byrd, Jr. Biography* (last visited March 29, 2017) www.adl.org/education-outreach. Instead of taking Byrd home, the three men took Byrd to a remote county road, beat him severely, and chained him by his ankles to their pickup truck before dragging him for approximately 1.5 miles. *Id.* The perpetrators dumped Byrd's deceased body in front of an African-American church. *Id.*

All the perpetrators were prosecuted for various crimes, but without the assistance of hate crime laws, since none were applicable at the time. *Id.*

In recognition of this deficiency in the law, in 2009, Congress passed and President Obama signed into law the very statute before the Court. *See* PL 111-84, October 28, 2009, 123 Stat 2190, Division E. In doing so, Congress found that hate crimes posed a “serious national problem” and were significantly different from other types of crimes. *See* Findings, Pub. L. 111–84, div. E, §4702, Oct. 28, 2009, 123 Stat. 2835.

A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

Id.

As President Obama put it, these crimes “are meant not only to break bones, but to break spirits - not only to inflict harm, but to instill fear.” President Barack Obama, *Remarks by the President at Reception Commemorating the Enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act* (October 28, 2009) (transcript available at whitehouse.gov).

For hundreds of years, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. *See* Findings, Pub. L. 111–84, div. E, §4702, Oct. 28, 2009, 123 Stat. 2835. “Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.” *Id.*

This history sheds light on the gravity of the crime before the Court. There are numerous appalling aspects to this crime, but none more than the randomness of it. Prior to May 18, 2016, the Defendant and A.W. had no prior contact or communication. Even on that day, A.W. was simply loading items into his truck at his own home and did nothing to provoke this vicious attack.

Nonetheless, when the Defendant drove past A.W. he immediately circled back around to A.W.'s house to assault A.W. for merely being African-American. In conjunction with the physical assault, the Defendant chose to hurl one of the ugliest words in American culture, nigger, at A.W. to make clear the reason for the assault.

However, the physical and verbal assault was just part of his crime. The Defendant then took to social media two separate times to broaden the circle of fear. As the Defendant described it, he was "pissed cuz the cops showed up while me and my brother was kicking [A.W.'s] ass" and that this assault was "[m]ore scores to add to my war book of the White Man" with a reference to "Heil Hitler."

The Defendant continued to degrade the victim publicly by perpetuating lies even after being arrested and incarcerated for this assault. A day after he was arrested, the Defendant lied to the *Toledo Blade* and made the victim seem like the instigator. Specifically, he stated that A.W. said "some racial slurs because I had my window rolled down" and that he had "no idea why they say this is racially motivated. . . ." Tom Troy and Ryan Dunn, *2 involved in fight charged with assault*, Toledo Blade, May 25, 2016. These statements are untrue and were debunked by the Defendant's own statements to the PSR writer. But the Defendant's effort to perpetuate and disseminate them is another indicator of how the crime was aimed to terrorize not just A.W. but the community as a whole.

B. History and Characteristics of the Defendant

The Defendant's violent history is uncontroverted. Since the age of 15, the Defendant has been convicted or adjudicated for 12 different threats or acts of violence, not including the offense before the Court. Even while incarcerated he has continued his violent behavior by assaulting corrections officers, one of which occurred while he was incarcerated on the present case. He

admitted he has “anger issues” and “does not play well with others.” Dr. Gregory Forgac indicated the Defendant has characteristics of aggressiveness and “may enjoy intimidating others.”

The Defendant’s violent tendencies are coupled with his racist views. In 2015, while serving a state sentence, prison personnel found white supremacy literature in his cell. Specifically, the literature related to the Aryan Republic Army, a white supremacy group in the 1990s. When questioned by the prison staff about the material, the Defendant admitted to being a member of the Aryan Republic Army since 2009 and that he does not like African-Americans.

Likewise, the Defendant openly shared his racist views on social media with hundreds of posts related to white supremacy, including the posts about this assault, a photograph of President Obama with a noose around his neck titled, “The making of a National Holiday;” a strongly worded defense of his use of the n-word; and referenced African-Americans as monkeys.

These beliefs have continued since his incarceration in this case. He admitted to the PSR he supports white supremacy and called his girlfriend to make a joke about lynching African-Americans.

Perhaps, the best evidence of the Defendant’s racist’s beliefs are the symbols permanently etched into his skin: a swastika; a portrait of Adolph Hitler; a German war eagle, an iron cross, and a Confederate flag; that he noted all represent “white supremacy.”

C. Deterrence

Courts must fashion a sentence that deters both the individual defendant and like-minded individuals who may commit similar acts in the future. As noted above, the Defendant has been convicted of 12 separate crimes of violence or threats of violence. He has spent roughly 7 years of his adult life incarcerated. Yet, all of those separate interactions with the criminal justice system and

interventions by probation personnel, have not deterred him from engaging in persistent and consistent criminal activity.

Likewise, the Defendant does not seem to grasp the dangerousness of advocating or carrying out racial violence. This is evidenced by his joke to his girlfriend about African-Americans being lynched *as he sat in jail for committing a federal hate crime*. He still openly admits he supports the forcible enactment of a white supremacy ideology and has not indicated a willingness to change those beliefs.

The Defendant's beliefs and actions are not a rarity. In the most recent year for which we have data, 2015, the FBI reported that there were 6,837 single-bias incidents of hate crimes, 2,123 of which were motivated by anti-Black or African-American bias. FBI, Uniform Crime Report, Hate Crime Statistics, 2015, (Released Fall 2016) (available at https://ucr.fbi.gov/hate-crime/2015/topicpages/incidentsandoffenses_final.pdf). Put it another way, in 2015, almost six African-Americans were targeted each day for the year for hate crimes.

It is clear that the prior sentences imposed by criminal courts have not garnered the Defendant's attention, or like-minded individuals, enough to deter racially charged violent acts. Therefore, any sentence must send a message to the Defendant and the public that this behavior is not tolerated and will be punished harshly.

D. Protect the Public

Incarceration is designed to remove those from society who continue to be a threat to the safety and well-being of the people. The Defendant has demonstrated his continued will to harm others. While the Defendant stated, "I have remorse" in his PSR interview, nothing about his actions indicate as such. He still staunchly supports white supremacy and its beliefs. He still remains violent including assaulting corrections officers at the jail. He still does not understand

that lynching is no laughing matter. The Defendant has given no indication he is willing to address these issues, and thus, he remains a serious threat to society, particularly those in the African-American community.

E. Just Punishment

One of the tenants of a just punishment is eliminating discrepancies in the length of sentences for similar crimes across jurisdictions. As such, other hate crime cases are insightful.

Recently, in the Northern District of Iowa, *U.S. v. Metcalf*, NDIA Case No. 15CR1032, the court sentenced the defendant to the statutory maximum for a hate crime violation. Department of Justice Press Release, *Man Convicted of Racially Motivated Hate Crime Sentenced to Maximum Term of Imprisonment*, October 5, 2016, <https://www.justice.gov/usao-ndia/pr/man-convicted-racially-motivated-hate-crime-sentenced-maximum-term-imprisonment> (last visited March 29, 2017). There, the defendant assaulted an African-American man in a bar in Dubuque, Iowa. *Id.* Before the physical assault the defendant used racial slurs, and displayed his swastika tattoo while bragging about having burned crosses. *Id.* Later in the night, the defendant assaulted an African-American man by repeatedly kicking the victim in the head. *Id.* The victim suffered injuries, including bruising and swelling of his face, scrapes and abrasions, a fractured facial bone, a left ankle sprain, and memory loss. *Id.* The United States District Court Judge sentenced the defendant to 120 months. *Id.*

In 2012, in the Eastern District of Kentucky, *U.S. v. Jenkins, et al*, EDKY Case No. 12CR00015, the court sentenced the lead defendant to 30 years of imprisonment, and the second most culpable defendant to 18 years. Department of Justice Press Release, *Four Eastern Kentuckians Sentenced for Roles in Kidnapping and Assaulting a Letcher County Man*, June 19, 2013, <https://www.justice.gov/usao-edky/pr/four-eastern-kentuckians-sentenced-roles->

kidnapping-and-assaulting-letcher-county-man (last visited March 29, 2017). There, two men and two women kidnapped a gay man, drove him to a deserted mountaintop, and beat him viciously while yelling anti-gay slurs. *Id.* After trial, the two main perpetrators were sentenced to 30 years and 18 years of imprisonment, respectively. *Id.*

III. Conclusion

As Maya Angelou said in *All God's Children Need Traveling Shoes*, "The ache for home lives in all of us. The safe place where we can go as we are and not be questioned." This Defendant attempted to destroy that home not only for A.W., but also for every African-American in the United States, by his words and actions.

This conduct is in conformity with his character, he is not truly remorseful, nor has he given any indication he will be changed upon his release from prison.

Accordingly, the government respectfully requests this Court to impose the statutory maximum of 120 months of imprisonment.

Respectfully submitted,

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By: /s/ Michael J. Freeman

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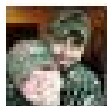
CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March 2017 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Michael J. Freeman

Michael J. Freeman
Assistant U.S. Attorney

Exhibit 1



Charles Butlerr

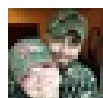
May 2 · Toledo, OH · 🌐

Oh so true



2 Likes

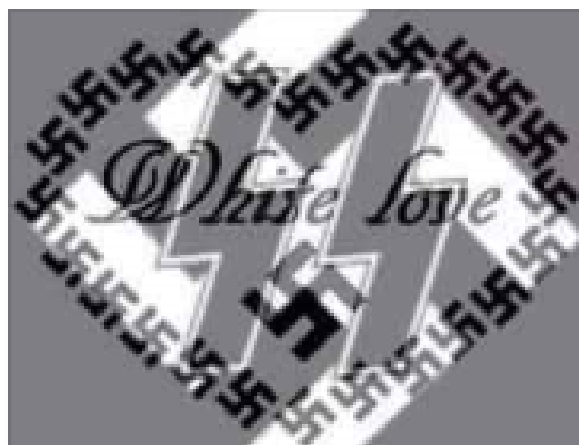
Exhibit 2



Charles Butlerr

May 18 at 2:28pm · Toledo, OH · 🌐

It has come to my attention that some ppl on my fb don't like me using the N..... Word. Well sent u ppl r such crying bitch and don't like the word NIGGER then block me. I DON'T REALLY GIVE A FUCK WHAT U CRYING ASS HOES THINK OF ME. I AM WHO I AM... I STAND FOR WHAT I STAND FOR I believe First Amendment and the Second Amendment. I STAND FOR MY RACE AND AM PROUD OF BEING WHITE....SO FUCK U...IF U DON'T LIKE WHAT I POST ON MY FB DON'T FUCKING READ IT OR BETTER YET BLOCK ME. 100 WHITE AND STRONG AND PROUD.



7 Likes 2 Comments

Exhibit 3



Charles Butlerr

May 2 · Toledo, OH · 🌐

Look it's the Discovery Channel at a bar on TV and I Monkees on TV



Exhibit 4

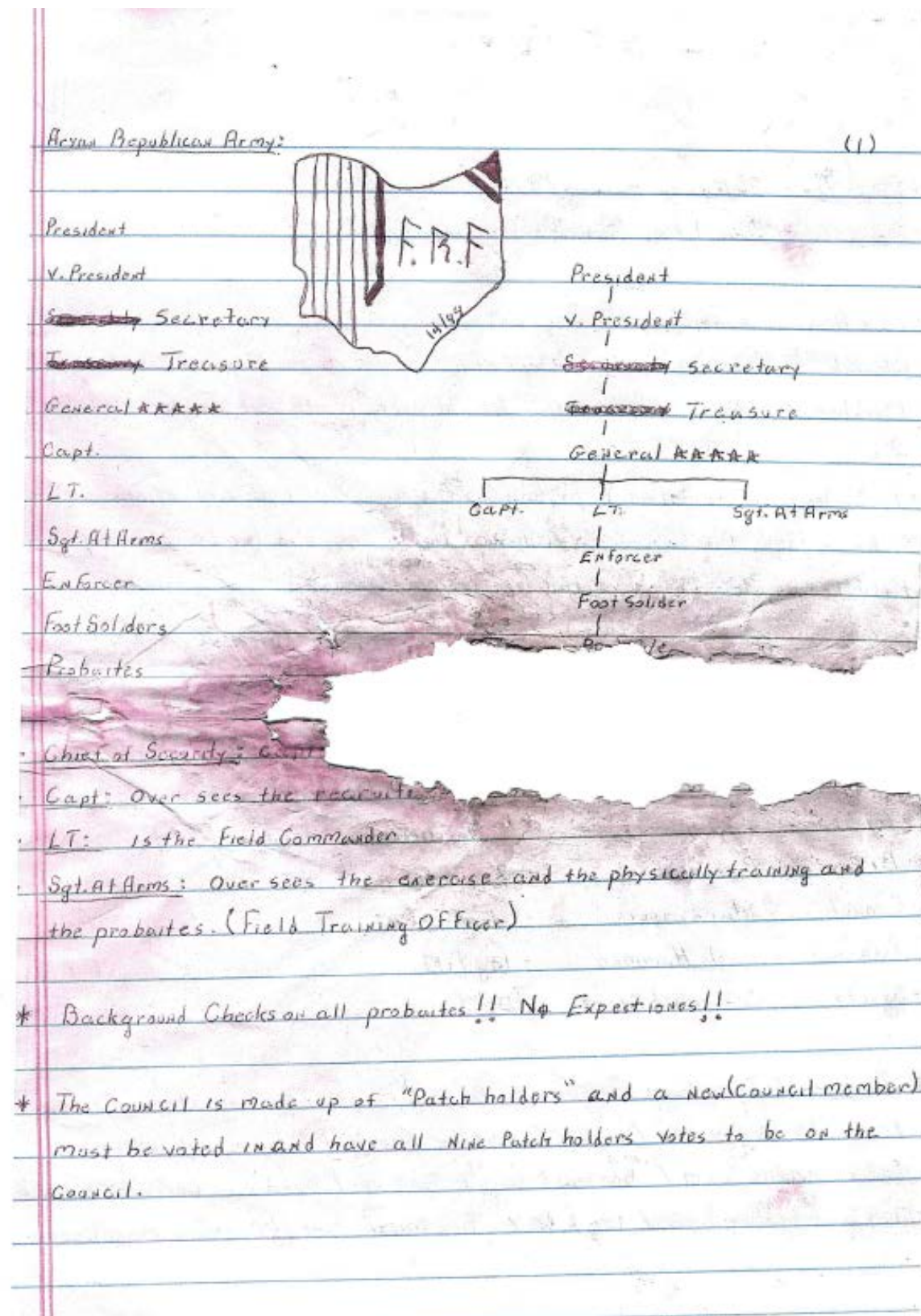


Exhibit 5

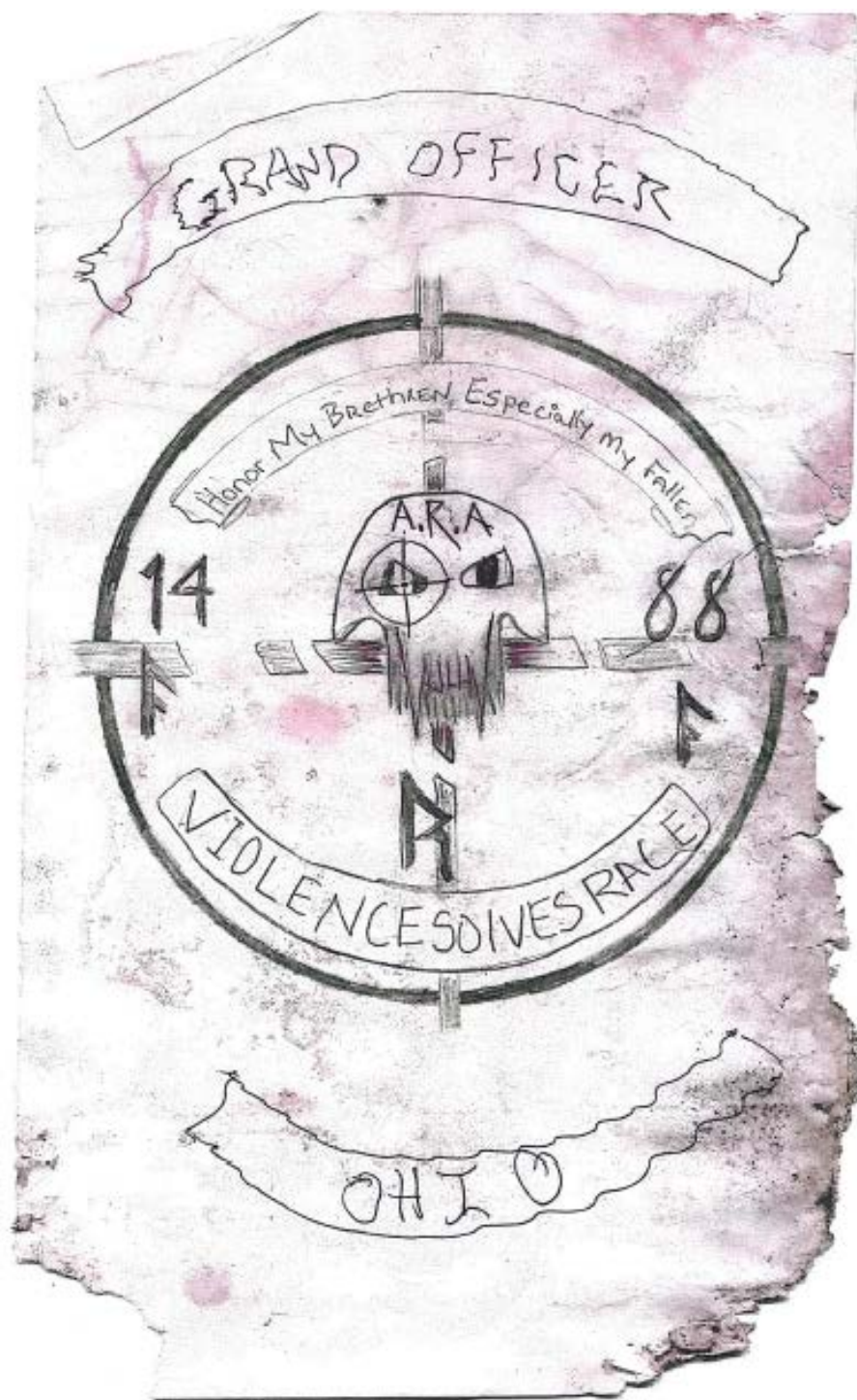


Exhibit 6- Pg 1 of 3.

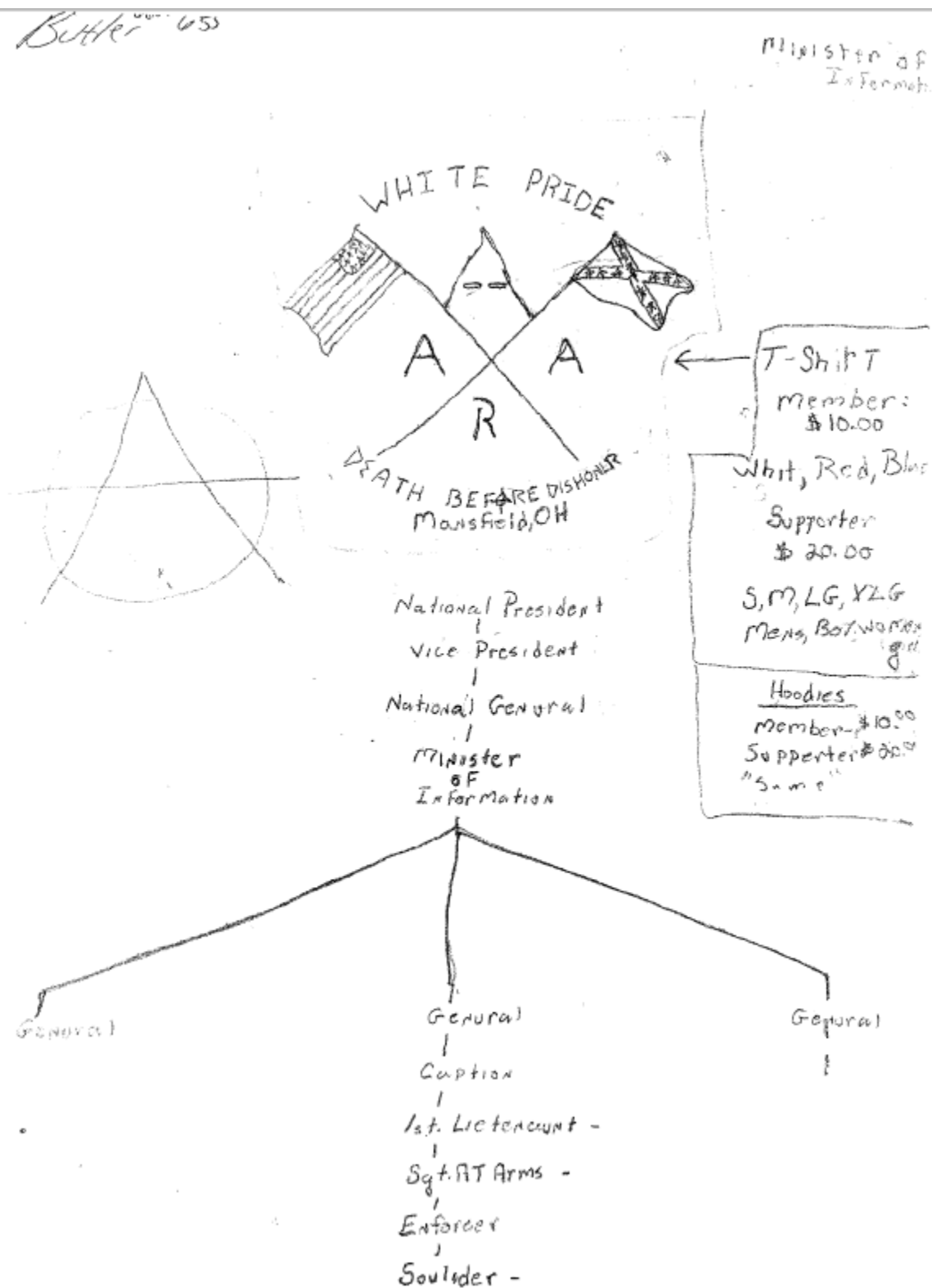


Exhibit 6- Pg. 2 of 3

NATIONAL HSS. for White People

- ① - National President
- ② - Vice President
- ③ - Treasure
- ④ - Security
- ⑤ - Chairman
- ⑥ - Vice Chairman

A B C D E F G H I J K
 1 2 3 4 5 6 7 8 9 10
 L M N O P Q R
 11 12 13 14 15 16 17 18
 S T U V W X Y
 19 20 21 22 23 24 25 26
 Z

Programs For Poor White Children

- Breakfast Program - ①
- Free Health Clinics - ②
- Free Food giveaway - ③
- Slacks Program - ④
- ⑤
- ⑥

126 = ABF
 216 = FAB
 88 = HH
 81 = HA
 1111 = KKKK
 142316 = NWP

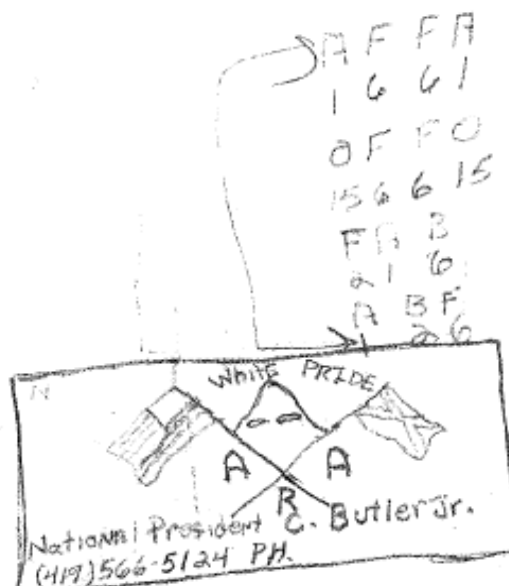
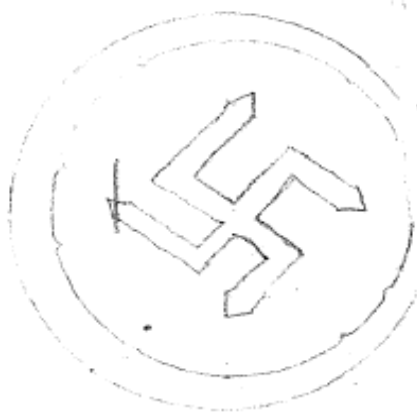


Exhibit 6- Pg. 3 of 3

DRC4018

Page 1 of 1

Conduct Report

Name: BUTLER JR, CHARLES EDWARD		Institution: LORCI	LORCI-15-000616
Date/Offense: 02/24/2015		Number: A663655	Lock: 07/A/219B
Time/Offense: 11:50 AM		Location: 7A 219	
Rule(s) Violated: 17.51 Engaging in unauthorized group activities as set forth in paragraph (B) of rule 5120-9-37 of the Administrative Code; Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given			

Supporting Facts (Describe what occurred and how the inmate violated the rule[s]):

Sir, this charge is being brought under AR 5120-9-06 (17) against Inmate Butler 663-655 previously identified as a White Supremacist. While Officer Nottingham was shaking down cell 7A 219. Officer Nottingham found white supremacy material that was found in possession of Inmate Butler property on February 24, 2015 at 11:50am. The material had Aryan Republican Army rankings from the National President to the soldier. It also had drawings of 14/88 with a swastika and German cross as well as a drawing of the American & Confederate flag with a Klansman with a rope with ARA (Aryan Republican Army) Southern Pride Live Free. This writer talked to inmate Butler on February 24, 2015. Inmate Butler admitted to being a member of the Aryan Republican Army that he join at ManCI prison in 2009. Inmate Butler said this was an unauthorized white supremacist hate group. That was founded in the 1990's in California. This group committed at least 22 arm robberies in the Midwest before it was dismantled by the FBI. Inmate Butler says he doesn't like African Americans. This writer believes that Inmate Butler 663-655 violated AR 5120-9-37(3) Communicating support of, association with, or involvement in any unauthorized group. The form of communication may be verbal (written or spoken) as through codes, jargon, etc., or non-verbal (conduct as through hand signs, symbols, displays, drawings, graffiti,

(Use Conduct Report Supplement sheet, if needed)

As the Charging Official, do you wish to have input into the disciplinary proceedings? ☐ Yes ☐ No

Printed Name: kilbanemf	Signature: <i>Martin F. Kilbane</i>	
Shift: Special Duty	Days Off: Saturday & Sunday	Date: 02/24/2015

A copy of this conduct report was served upon the above-named inmate on: March, 04 20 15, at 12:45 PM.

Staff Signature: <i>James R. Kelly</i>

I acknowledge receipt of the conduct report on the above stated date and time:

Inmate Signature: <i>CB</i>	Number: A663655
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DRC 4018 (rev 12/05) DISTRIBUTION: WHITE - RIB CANARY - Unit File PINK - RIB Board GOLD - Inmate ACA 4214 through 4236, 4269

<http://dotsportal/reports/DRC4018.aspx?fid=4e494bed-4774-480c-98e9-d058bacd3a75&g...> 6/29/2016

Exhibit 7

A copy of the audio was delivered to the Court and Defense Counsel

